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Inhuman: Yes or No?

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Washington Post
September 12, 2005

During a meeting at The Post late last month I asked Attorney General Alberto Gonzales a pretty simple question: Is it the policy of the Bush administration not to subject the foreign prisoners it is holding to "cruel, inhuman and degrading" treatment? The phrase I quoted refers to abuse falling just short of torture. It is banned by an international treaty negotiated by the Reagan administration and ratified a decade ago by the Senate.

Gonzales started to reply, then hesitated. Then he said he wasn't sure, and would have to get back to me with an answer.

Last week I called his office to see if the answer was ready. It wasn't. Instead, a spokesman told me that "the staff" response was to refer me to the testimony delivered in Gonzales's name to the Senate Judiciary Committee after his confirmation hearing earlier this year. It was that maddeningly unclear language that prompted me to ask him the question in the first place.

A couple of things about this exchange struck me as remarkable. First, how could the attorney general of the United States not be able to state U.S. policy on cruel, inhuman and degrading treatment of prisoners -- especially since his department has repeatedly reviewed the matter in the past several years? Gonzales, mind you, didn't appear to be evading the question. He simply didn't know the answer.

The other issue flows from the first: Why is it that the Bush administration, at enormous cost to U.S. prestige around the world, insists on being ambiguous about this straightforward question? If Gonzales has a defense, it may be that the lawyers in his department who have addressed the issue have done so in a way that could easily confuse someone like their boss -- not to mention the captains and sergeants and civilian contractors actually charged with interrogating prisoners in places such as Iraq, Afghanistan and Guantanamo.

Here's the answer that was submitted on Gonzales's behalf, though apparently without his comprehension, last January: Despite the treaty, the administration contends that "there is no legal prohibition" on the use of cruel, inhuman and degrading treatment by U.S. personnel as long as it is inflicted on "aliens overseas." That means the CIA, for example, could legally abuse the al Qaeda suspects it is holding in secret foreign detention facilities, provided it stops short of outright torture. But, Gonzales's ghostwriters added, the administration "wants to be" in compliance with the treaty standard. That suggests that "CID," as the lawyers call it, is prohibited in practice.

Or does it? The Senate has legally defined "cruel, inhuman and degrading" as any treatment that would violate the Fifth, Eighth or 14th Amendments to the U.S. Constitution. Gonzales said all approved interrogation techniques had been checked against that standard. But the attorney general was also asked about various specific practices American interrogators are known to have used, including simulated drowning, mock execution, sleep deprivation, forced nudity and the use of dogs to inspire fear. He answered: "Some might . . . be permissible in certain circumstances." That must mean one of two things: Either the Bush administration considers mock execution and simulated drowning allowable under the Constitution -- and thus available for use by the FBI on Americans -- or it does not, in fact, have a policy of prohibiting CID for all prisoners.

Gonzales isn't the only one who doesn't get it. The administration's artfully muddled position has triggered an extraordinary standoff between the White House and a group of Senate Republicans, led by torture victim John McCain. McCain now has eight GOP co-sponsors for an amendment to this year's defense authorization bill that would prohibit the use of cruel, inhuman and degrading treatment for all "persons in the detention of the U.S. government." His staff is confident he has the votes to pass the measure when the bill comes up on the floor, probably later this month.

The administration protests that McCain's proposed rule is already being followed. A CIA briefer recently assured congressional staffers that CID was out of bounds for al Qaeda detainees. So why did Vice President Cheney vehemently object to the proposed amendment in a meeting with McCain and Armed Services Committee Chairman John Warner this summer? And why did the administration pull the defense authorization bill from the Senate floor in late July rather than allow the amendment to come to a vote?

Maybe there's a good reason. But don't ask Alberto Gonzales.